

of the hearing. The administrative law judge or presiding officer shall direct to whom the information is to be made available (e.g., to parties or participants, or only to counsel for parties or participants), and persons not specifically permitted access to the data will be excluded from the in camera part of the proceeding. The administrative law judge or other presiding officer may impose other conditions or safeguards. The limited availability of material under this paragraph does not constitute prior disclosure to the public as defined in § 20.81, and no information subject to a particular order is to be submitted to or received or considered by FDA in support of a petition or other request from any other person.

[44 FR 22323, Apr. 13, 1979, as amended at 46 FR 8455, Jan. 27, 1981; 49 FR 7363, Feb. 29, 1984; 54 FR 9034, Mar. 3, 1989; 59 FR 14363, Mar. 28, 1994]

§ 10.25 Initiation of administrative proceedings.

An administrative proceeding may be initiated in the following three ways:

(a) An interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. A petition must be either: (1) In the form specified in other applicable FDA regulations, e.g., the form for a color additive petition in § 71.1, for a food additive petition in § 171.1, for a new drug application in § 314.50, for a new animal drug application in § 514.1, or (2) in the form for a citizen petition in § 10.30.

(b) The Commissioner may initiate a proceeding to issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action. FDA has primary jurisdiction to make the initial determination on issues within its statutory mandate, and will request a court to dismiss, or to hold in abeyance its determination of or refer to the agency for administrative determination, any issue which has not previously been determined by the agency or which, if it has previously been determined, the agency concluded should be reconsidered and subject to a new administrative determination. The Commissioner may utilize any of the procedures es-

tablished in this part in reviewing and making a determination on any matter initiated under this paragraph.

(c) The Commissioner will institute a proceeding to determine whether to issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action whenever any court, on its own initiative, holds in abeyance or refers any matter to the agency for an administrative determination and the Commissioner concludes that an administrative determination is feasible within agency priorities and resources.

[44 FR 22323, Apr. 13, 1979, as amended at 54 FR 9034, Mar. 3, 1989]

§ 10.30 Citizen petition.

(a) This section applies to any petition submitted by a person (including a person who is not a citizen of the United States) except to the extent that other sections of this chapter apply different requirements to a particular matter.

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and in the following form:

(Date) _____

Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

CITIZEN PETITION

The undersigned submits this petition under _____ (relevant statutory sections, if known) of the _____ (Federal Food, Drug, and Cosmetic Act or the Public Health Service Act or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs under 21 CFR 5.10) to request the Commissioner of Food and Drugs to _____ (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

A. Action requested

((1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests the Commissioner to issue, amend, or revoke an order, a copy of the exact wording of the citation to the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.)

B. Statement of grounds

(A full statement, in a well organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

C. Environmental impact

(A) Claim for categorical exclusion under §§ 25.30, 25.31, 25.32, 25.33, or § 25.34 of this chapter or an environmental assessment under § 25.40 of this chapter.)

D. Economic impact

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on: (1) Cost (and price) increases to industry, government, and consumers; (2) productivity of wage earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

E. Certification

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition which appears to meet the requirements of paragraph (b) of this section and § 10.20 will be filed by the Dockets Management Branch, stamped with the date of filing, and assigned a docket number. The docket number identifies the file established by the Dockets Management Branch for all submissions relating to the petition, as provided in this part. Subsequent submissions relating to the matter must refer to the docket number and will be filed in the docket file. Related petitions may be filed together and given the same docket number. The Dockets Management Branch will promptly notify the petitioner in writing of the filing and docket number of a petition.

(d) An interested person may submit written comments to the Dockets Management Branch on a filed petition, which comments become part of the docket file. The comments are to specify the docket number of the petition and may support or oppose the petition in whole or in part. A request for alternative or different administrative action must be submitted as a separate petition.

(e)(1) The Commissioner shall, in accordance with paragraph (e)(2), rule upon each petition filed under paragraph (c) of this section, taking into consideration (i) available agency resources for the category of subject matter, (ii) the priority assigned to the petition considering both the category of subject matter involved and the overall work of the agency, and (iii) time requirements established by statute.

(2) Except as provided in paragraph (e)(4) of this section, the Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either:

(i) Approve the petition, in which case the Commissioner shall concurrently take appropriate action (e.g., publication of a FEDERAL REGISTER notice) implementing the approval;

(ii) Deny the petition; or

(iii) Provide a tentative response, indicating why the agency has been unable to reach a decision on the petition, e.g., because of the existence of other agency priorities, or a need for additional information. The tentative response may also indicate the likely ultimate agency response, and may specify when a final response may be furnished.

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. The petitioner is to be notified in writing of the Commissioner's decision. The decision will be placed in the public docket file in the office of the Dockets Management Branch and may also be in the form of a notice published in the FEDERAL REGISTER.

(4) The Commissioner shall furnish a response to each petitioner within 90 days of receipt of a petition filed under

section 505(j)(2)(C) of the act. The response will either approve or disapprove the petition. Agency action on a petition shall be governed by § 314.93 of this chapter.

(f) If a petition filed under paragraph (c) of this section requests the Commissioner to issue, amend, or revoke a regulation, § 10.40 or § 10.50 also apply.

(g) A petitioner may supplement, amend, or withdraw a petition in writing without agency approval and without prejudice to resubmission at any time until the Commissioner rules on the petition, unless the petition has been referred for a hearing under parts 12, 13, 14, or 15. After a ruling or referral, a petition may be supplemented, amended, or withdrawn only with the approval of the Commissioner. The Commissioner may approve withdrawal, with or without prejudice against resubmission of the petition.

(h) In reviewing a petition the Commissioner may use the following procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, 15, or 16.

(3) A FEDERAL REGISTER notice requesting information and views.

(4) A proposal to issue, amend, or revoke a regulation, in accordance with § 10.40 or § 12.20.

(5) Any other specific public procedure established in this chapter and expressly applicable to the matter.

(i) The record of the administrative proceeding consists of the following:

(1) The petition, including all information on which it relies, filed by the Dockets Management Branch.

(2) All comments received on the petition, including all information submitted as a part of the comments.

(3) If the petition resulted in a proposal to issue, amend, or revoke a regulation, all of the documents specified in § 10.40(g).

(4) The record, consisting of any transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from the optional procedures specified in paragraph (h) of this section, except a transcript of a closed portion of a public advisory committee meeting.

(5) The Commissioner's decision on the petition, including all information identified or filed by the Commissioner with the Dockets Management Branch as part of the record supporting the decision.

(6) All documents filed with the Dockets Management Branch under § 10.65(h).

(7) If a petition for reconsideration or for a stay of action is filed under paragraph (j) of this section, the administrative record specified in § 10.33(k) or § 10.35(h).

(j) The administrative record specified in paragraph (i) of this section is the exclusive record for the Commissioner's decision. The record of the administrative proceeding closes on the date of the Commissioner's decision unless some other date is specified. Thereafter any interested person may submit a petition for reconsideration under § 10.33 or a petition for stay of action under § 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a new petition to modify the decision in accordance with this section.

(k) This section does not apply to the referral of a matter to a United States attorney for the initiation of court enforcement action and related correspondence, or to requests, suggestions, and recommendations made informally in routine correspondence received by FDA. Routine correspondence does not constitute a petition within the meaning of this section unless it purports to meet the requirements of this section. Action on routine correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(l) The Dockets Management Branch will maintain a chronological list of each petition filed under this section and § 10.85, but not of petitions submitted elsewhere in the agency under § 10.25(a)(1), showing:

(1) The docket number;

(2) The date the petition was filed by the Dockets Management Branch;

(3) The name of the petitioner;

(4) The subject matter involved; and

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(5) The disposition of the petition.

[44 FR 22323, Apr. 13, 1979, as amended at 46 FR 8455, Jan. 27, 1981; 50 16656, Apr. 26, 1985; 54 FR 9034, Mar. 3, 1989; 57 FR 17980, Apr. 28, 1992; 59 FR 14364, Mar. 28, 1994; 62 FR 40592, July 29, 1997]

§ 10.33 Administrative reconsideration of action.

(a) The Commissioner may at any time reconsider a matter, on the Commissioner's own initiative or on the petition of an interested person.

(b) An interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25. Each request for reconsideration must be submitted in accordance with § 10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the FEDERAL REGISTER, the day of publication is the day of decision.

(Date) _____

Dockets Management Branch, Food and Drug Administration, Department of Health and Human Services, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

PETITION FOR RECONSIDERATION

[Docket No.]

The undersigned submits this petition for reconsideration of the decision of the Commissioner of Food and Drugs in Docket No. _____.

A. Decision involved

(A concise statement of the decision of the Commissioner which the petitioner wishes to have reconsidered.)

B. Action requested

(The decision which the petitioner requests the Commissioner to make upon reconsideration of the matter.)

C. Statement of grounds

(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner.

(No new information or views may be included in a petition for reconsideration.)

(Signature) _____

(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition for reconsideration relating to a petition submitted under § 10.25(a)(2) is subject to the requirements of § 10.30 (c) and (d), except that it is filed in the same docket file as the petition to which it relates.

(d) The Commissioner shall promptly review a petition for reconsideration. The Commissioner may grant the petition when the Commissioner determines it is in the public interest and in the interest of justice. The Commissioner shall grant a petition for reconsideration in any proceeding if the Commissioner determines all of the following apply:

(1) The petition demonstrates that relevant information or views contained in the administrative record were not previously or not adequately considered.

(2) The petitioner's position is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting reconsideration.

(4) Reconsideration is not outweighed by public health or other public interests.

(e) A petition for reconsideration may not be based on information and views not contained in the administrative record on which the decision was made. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision under § 10.25(a).

(f) The decision on a petition for reconsideration is to be in writing and placed on public display as part of the docket file on the matter in the office of the Dockets Management Branch. A determination to grant reconsideration will be published in the FEDERAL REGISTER if the Commissioner's original decision was so published. Any other determination to grant or deny reconsideration may also be published in the FEDERAL REGISTER.

(g) The Commissioner may consider a petition for reconsideration only before the petitioner brings legal action in the courts to review the action, except that a petition may also be considered